

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

MESHA GERKEN, BRENDAN STARKEY,
and HEATHER STARKEY,

Plaintiffs,

v.

No. 1:19-cv-860-WJ-SCY

DOMENIC CHARLES MILES and
PROGRESSIVE DIRECT INSURANCE COMPANY,
d/b/a PROGRESSIVE NORTHERN INSURANCE COMPANY,

Defendants.


ORDER TO SHOW CAUSE

THIS MATTER is before the Court *sua sponte*. This case is one of two state court cases regarding the same series of incidents which were removed to federal court on the basis of diversity. Defendants moved to consolidate the two cases (Doc. 14) but while that motion was pending the later-removed case, *Progressive Direct Insurance Company, d/b/a Progressive Northern Insurance Company, Plaintiff vs. Mesha L. Gerken, Defendant and Mesha L. Gerken, Counter Plaintiff vs. Progressive Direct Insurance Company, d/b/a Progressive Northern Insurance Company, Counter Defendant and Mesha L. Gerken, Brendan Starkey, and Heather Starkey, Third-Party Plaintiffs vs. Domenic Charles Miles and Progressive Direct Insurance Company, d/b/a Progressive Northern Insurance Company, Third-Party Defendants*, No. 1:19-cv-00864, (“*Progressive v. Gerken*”) was remanded to state court. (See *Progressive v. Gerken*, Doc. 28.)

This Court was made aware of the remand via Plaintiffs' Supplemental Reply in Support of Their Motion to Stay Pursuant to the *Colorado River* Abstention Doctrine (Doc. 34).¹ There, Plaintiffs requested that the Court dismiss this matter in favor of resolution of the claims and defenses in the state court action. (*Id.*) What is more, based on the representations of the parties in their respective briefing regarding the Motion to Consolidate, it strikes the Court that all of the claims in this case are included in *Progressive v. Gerken* and, as such, could be adjudicated solely in the state court case. Accordingly, it is unclear to the Court why Plaintiffs have not sought voluntary dismissal of the case pursuant to Federal Rule of Civil Procedure Rule 41.

IT IS THEREFORE ORDERED that Plaintiff is required to show cause as to why they have not moved for dismissal under Rule 41 in light of the fact that they have asked this Court for dismissal. Plaintiff is required to respond within 14 days of this Order. If Plaintiff fails to respond, the Court may take additional *sua sponte* action necessary.

IT IS SO ORDERED.



CHIEF UNITED STATES DISTRICT JUDGE

¹ Based on the Court's cursory review of the briefing on that Motion, it appears that Plaintiffs are unlikely to succeed on the merits given the high bar set by *Colorado River*.